Initial Statement of Reason

Title 18. Public Revenue
Sales and Use Tax, Regulation 1571, Florist

Regulation 1571, *Florists*, was first adopted as Ruling 42 in 1933 to explain the application of tax to traditional sales of floral arrangements where one florist accepts the order and instructs another florist to make the delivery. The regulation was amended in 1971 to clarify the measure of tax, but the manner in which tax applies has remained the same since 1933. Currently, Regulation 1571 provides that tax applies to amounts charged by California florists for the delivery of flowers, wreaths, etc., regardless of whether another florist fills the order or the location where the flowers, wreaths, etc. are delivered. Tax does not apply to amounts received by California florists for making deliveries in California pursuant to instructions received from other florists. Without the provisions of Regulation 1571, florists would be subject to tax just like other retailers. Regulation 1620, *Interstate and Foreign Commerce*, would apply to sales for delivery outside of California; Regulation 1684, *Collection of Use Tax by Retailers*, would apply to out-of-state sales for delivery in California; and Regulation 1706, *Drop Shipments*, would apply to California florists who deliver flowers, wreaths, etc. in California pursuant to instructions from other florists.

The application of tax to orders taken by California florists for the delivery of flowers, wreaths, etc. outside California was discussed in two separate cases heard by the Board in March 2002 and February 2006, which were decided in favor of the taxpayers. Both cases involved taxpayers located in California that sold flowers exclusively through their Web sites and toll-free telephone numbers. In the first case, the taxpayer did not normally use a floral delivery association to fulfill and deliver orders. Instead, the taxpayer forwarded orders to: (1) growers who combined their own flowers with accessories provided by the taxpayer and shipped the arrangements by common carrier; or (2) packers who prepared the arrangements using flowers and accessories provided by the taxpayer and shipped the arrangements by common carrier. In the second case, the taxpayer used a floral delivery association; however, the taxpayer sent all its orders to other florists for fulfillment and delivery, and did not fulfill any orders itself.

In both cases, the taxpayers pointed out that the current rules for florists were developed for florists who operated traditional flower shops and conducted transactions for the delivery of flowers, wreaths, etc. through a florist delivery association. Because these taxpayers did not fit the traditional business model that Regulation 1571 was promulgated to address, these Internet-based retailers of flowers argued that they should not be considered "florists" for purposes of applying Regulation 1571. Rather, the taxpayers believed that their sales for out-of-state delivery should be reported under the standard rules for transactions in interstate and foreign commerce provided in Regulation 1620. The Board found in favor of both taxpayers and subsequently determined that Regulation 1571 should be amended to reflect the results reached in those decisions.

Regulation 1571 is amended to define "florist" to mean a retailer who conducts transactions for the delivery of flowers, wreaths, etc. through a florist delivery association, unless that retailer does not fulfill other florists' orders for the delivery of flowers, wreaths, etc. Florists who meet this definition would continue to report their sales as they do under the current provisions of Regulation 1571, while retailers of flowers, wreaths, etc. who do not meet the definition would report tax just like other retailers. It is intended that the current tax treatment of traditional florists not be affected by the amendment.